

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**CONTEMPORARY CARS, INC.
d/b/a MERCEDES-BENZ OF ORLANDO
and AUTONATION, INC.,
SINGLE AND JOINT EMPLOYERS**

Cases 12-CA-26126
12-CA-26233
12-CA-26306
12-CA-26354
12-CA-26386
12-CA-26552

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

ORDER

The General Counsel's request for special permission to appeal Associate Chief Administrative Law Judge William N. Cates' ruling continuing the hearing is denied as moot, and the matter is remanded to the judge for further proceedings.

On June 24, 2010, the General Counsel filed a Request for Special Permission to Appeal the judge's June 18, 2010 Order directing that the hearing in this matter be "continued to an appropriate date" after the Board has considered the ramifications of the Supreme Court's recent decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, on the Board's prior decision in Case 12-CA-26377, a test-of-certification case¹ that was then pending before the U.S. Court of Appeals for the District of Columbia. The General Counsel argues that the judge erred because Board procedures permit the concurrent litigation of Section 8(a)(5) allegations while an earlier case involving a question of representation (such as a test-of-certification case) is pending before a court or before the Board.

¹ 354 NLRB No. 72.

While the Request for Special Permission to Appeal was pending, however, in view of the Court's decision in *New Process Steel*, the Board issued an order setting aside its August 28, 2009 Decision and Order in Case 12-CA-26377 and retaining that case on its docket for further action as appropriate. Thereafter, on August 23, 2010, the Board issued a new Decision and Order in Case 12-CA-26377 (reported at 355 NLRB No. 113), in which it considered the pre-election representation issues raised by Respondent Mercedes-Benz of Orlando (MBO) and affirmed the decision to deny MBO's Request for Review in the prior proceeding. The Board further found that the election was properly held, the tally of ballots is a reliable expression of the employees' free choice, and the Regional Director's certification of representative based thereon was valid. Finally, the Board granted the General Counsel's Motion for Summary Judgment and found that MBO had unlawfully refused to bargain with the Union.

Because the Board has now addressed the impact of the Supreme Court's decision as it relates to Case 12-CA-26377, as anticipated in the judge's June 18, 2010 order, there is no basis for further delay in the instant proceedings. Accordingly, the General Counsel's Request for Special Permission to Appeal the judge's order is denied as moot, and we remand this matter to the judge to resume the hearing.²

Dated, Washington, D.C., August 27, 2010

WILMA B. LIEBMAN,	CHAIRMAN
PETER C. SCHAUMBER,	MEMBER
MARK GASTON PEARCE,	MEMBER

² In view of our disposition of this matter, we find it unnecessary to consider the Respondents' argument that the General Counsel's request was not timely filed.